

AMENDED IN ASSEMBLY MAY 18, 2009

AMENDED IN ASSEMBLY MAY 6, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 815

Introduced by Assembly Member Ma

February 26, 2009

An act relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 815, as amended, Ma. Public contracts: bidding procedures: legislative intent.

Existing law contains various provisions relating to the bidding process for public works projects. Existing law prohibits a local public entity, charter city, or charter county from requiring a bidder to assume responsibility for the completeness and accuracy of architectural or engineering plans and specifications on public works projects, except on clearly designated design-build projects.

This bill would declare the intent of the Legislature to consider enacting subsequent legislation to address the issues raised in a specified case being reviewed by the California Supreme Court, as needed, once those issues are ripe for consideration after the Supreme Court has rendered a decision interpreting the parties' rights and obligations under existing law with regard to public contracts disputes.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. It is the intent of the Legislature to consider enacting subsequent legislation to address the issues raised in *Los Angeles Unified School District v. Great American Ins. Co.* (2008) 163 Cal.App.4th 944, review granted, 193 P.3d 280; 84 Cal.Rptr.3d 35 (2008), as needed, once those issues are ripe for consideration after the California Supreme Court has rendered a decision interpreting the parties' rights and obligations under existing law.

~~SECTION 1. Section 1104 of the Public Contract Code is amended to read:~~

~~1104. (a) No local public entity, charter city, or charter county shall require a bidder to assume responsibility for the completeness and accuracy of architectural or engineering plans and specifications on public works projects, except on clearly designated design build projects. Nothing in this section shall be construed to prohibit a local public entity, charter city, or charter county from requiring a bidder to review architectural or engineering plans and specifications prior to submission of a bid, and report any errors and omissions noted by the contractor to the architect or owner. The review by the contractor shall be confined to the contractor's capacity as a contractor, and not as a licensed design professional.~~

~~(b) Except for clearly identified design-build projects or design-build portions thereof, before entering into any contract for a project, a local public entity, charter city, or charter county shall provide full, complete, and accurate plans and specifications and estimates of cost, giving such direction as will enable any competent mechanic or other builder to carry them out.~~

~~(c) This section shall not be construed to require a local public entity, charter city, or charter county, for projects that are completed entirely through an annual contract for repair, remodeling, or other repetitive work according to unit prices, to provide bidders with plans and specifications. If a local public entity, charter city, or charter county utilizing this type of contract provides bidders with plans and specifications, the plans and specifications shall comply with subdivision (b) of this section.~~

~~(d) (1) Nothing in this section shall be construed to require a contractor to prove an affirmative or intentional misrepresentation~~

1 or active concealment on the part of the local public entity, charter
2 city, or charter county that provides the plans and specifications.

3 ~~(2) Nothing in this section shall be construed to prohibit a local~~
4 ~~public entity, charter city, or charter county from raising any~~
5 ~~affirmative defenses available to it under law.~~

6 ~~(3) Nothing contained in this section shall expand, restrict, or~~
7 ~~otherwise change the liability or potential liability of a design~~
8 ~~professional, as defined in paragraph (2) of subdivision (b) of~~
9 ~~Section 2782.8 of the Civil Code.~~

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